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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,814	10/29/2003	James Baechle	4092	2813

23699 7590 03/07/2005

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SUITE 1600
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CHICAGO, IL 60603

EXAMINER

FOSTER, JIMMY G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 03/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

28

Office Action Summary

Application No.

10/605,814

Applicant(s)

BAECHLE ET AL.

Examiner

Jimmy G Foster

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-12 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/23/04</u> | 6) <input type="checkbox"/> Other: _____ |

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1) The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2) Claims 1, 6, 10 and 11 are rejected under 35 U.S.C. § 102(b) as being anticipated by Kawasaki (5,125,520). The tray rack of Kawasaki includes posts at 3 and sleeves at 4. Although the elements 8 are identified as being the trays, the tray supports 2 also constitute trays since the each tray support 2 includes a base at connecting bar 10 and side walls at side bars 7 extending upwardly with respect to the base to define a cavity (which receives a designated tray 8).

The sleeves 4 are located over the openings 6, and the posts 3 extend through the trays.

Regarding the claim calling for the sleeves to be decorated, the examiner asserts that the sleeves 4 are shown inherently decorated with a cylindrical shape. The term "decorate" means to add something so as to make more attractive. The examiner asserts that the cylindrical shape is more attractive than an indeterminate shape. Inasmuch as the outer shape of the sleeves could have been an indeterminate shape but are instead a determinate cylindrical shape, they are decorated.

3) Claim 1 is rejected under 35 U.S.C. § 102(b) as being anticipated by Trygg (6,109,857). In the reference of Trygg, there is provided a vertical stack of trays 1, a plurality of tray openings/holes 6 in the trays, a

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plurality spacer sleeves 14 over the openings in the trays, and posts 13 inserted in the sleeves and extending through the tray openings. Figure 5 shows the embodiment in which trays are connected to each other in stacked relationship, using the posts and sleeves.

4) The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5) Claims 2 and 4 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kawasaki (5,125,520) in view of Hayes (4,311,237). The reference of Hayes, at 48 and column 2, lines 22-24, suggests that sleeve/tubular spacers (48) for spacing/stacking plural trays/containers (20) may be made affixed, respectively, to the trays. It would be apparent from Figure 6 that affixing the spacers provides more stability to the stack of trays since the spacers are not allowed to freely move on the trays. Accordingly for this reason, it would have been obvious in view of Hayes to have made the sleeves 4 of Kawasaki respectively affixed to the trays 2.

The reference of Hayes further suggests that the topmost tray of a stack of trays may be covered by a top cap (50). This substantially reduces contaminants, like dust, from collecting on the contents of the topmost tray. Accordingly, it would have been obvious in view of Hayes to have provided a top cap over the topmost tray of Kawasaki for reducing contamination to the contents thereof.

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6) Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kawasaki (5,125,520) in view of Day (4,865,202). The reference of Day at 14,22 and col. 2, lines 62-64 suggests that a stack of trays may be provided with a pallet, wherein a bottommost tray is disposed on the pallet, for the purpose of being used by (i.e. transported by) a pallet jack. Accordingly, it would have been obvious in view of Day to have provided the bottommost tray of Kawasaki on a pallet, instead of on wheeled legs, for the purpose of being transported by the pallet jack from one location to another.

7) Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kawasaki (5,125,520) in view of Crane (4,266,714). The reference of Crane suggests that trays of a stacked tray system may be made of corrugated paperboard and with holes/opening 54 cut therein. This permits the trays to be made from blank material, with lower cost (see col. 1, lines 17-26) while maintaining rigidity. Accordingly for these reasons, it would have been obvious in view of Crane to have made the trays 2 from corrugated paperboard. Although the cutting of the openings is not stated as being made by cutting dies, cutting dies are a well known manner of cutting features in a blank, wherein the entire features may be cut out all at once. Moreover, inasmuch as patentability of claimed product may not depend on its method of being made, the openings of Crane, as applied herein to Kawasaki, would meet the die-cut openings claimed by Applicant, even if the openings were to be made by some other manner than die-cutting.

8) Claim 9 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kawasaki (5,125,520), described above. Although the sleeves 4 are

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cylindrical, Applicant has not stated a function reason for making the sleeves of the present invention with any particular shape. Accordingly, the reason must be assumed to be ornamental in nature. It has been held that a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. In re Dailey et al., 149 USPQ 47. Accordingly, it would have been obvious in view of this to have made the sleeves of Kawasaki with any other shape including the triangular shaped as claimed by Applicant.

9) Claims 6 and 7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Trygg (6,109,857), described above. Although the reference of Trygg does not disclose more than three spacer sleeves per tray, the reference suggests that the number of holes/openings (which receive the sleeves) may be varied. Therefore, there appears to be an inference that the number of sleeves may be varied. Moreover, it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. Accordingly, it would have been obvious for these reasons to have connected the trays of Figure 5 of Trygg with any number of spacing sleeves 14 (and their posts 13), including the number claimed by Applicant in claims 6 and 7.

10) Claim 12 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Kawasaki (5,125,520) in view of Brush (6,267,255). The reference of Brush, at 71 and column 2, lines 16-21, suggests that a stack of trays may be provided with an outer wrap (71) for the purpose of confining the product of the trays therein during shipping. Accordingly, it would have been obvious in view of Brush to have provided an outer wrap about the stack of trays of

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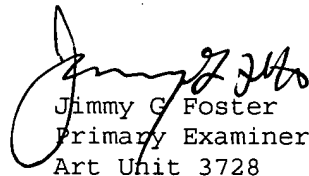
Kawasaki for confining the contents of the trays in the stack of trays for shipping purposes.

11) Claim 8 is objected to as being dependent on a rejected claim, but would be allowable if amended to include all of the limitations of the base claim and any intervening claim.

12) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number is (571) 272-4554. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.


Jimmy G Foster
Primary Examiner
Art Unit 3728

JGF
3 March 2005